

### Complaint Program Overview

The Department maintains a Patient Abuse Investigation program for investigation of complaints of physical abuse, mistreatment, and neglect. A General Complaint program is maintained for the investigation of complaints involving systemic problems in RHCs. Complaints involving misappropriation of resident funds are investigated under the General Complaint Program.

The patient abuse reporting legislation was enacted to protect Residential Health Care Facility (RHCF) patients from abuse. The original statute became effective on September 1, 1977, and mandated the immediate reporting of RHCF patient abuse, mistreatment or neglect by certain licensed health care professionals and encouraged reports from all sources.

On September 1, 1980, the statute was amended to require all RHCF employees and licensed health care personnel to make such reports.

The administration of the patient abuse reporting program is the responsibility of the Office of Health Systems Management's Bureau of Long Term Care Services. Following is a brief overview of the administrative procedures associated with the program.

- Reports may be made anytime, night or day, via the Office of Health Systems Management's Hotline. The telephone number for each Office of Health Systems Management Area Office is displayed on the Hotline poster in every RHCF. An emergency contact number for evenings, weekends and holidays (518-445-9989) is also listed. Collect calls are accepted on all numbers.
- Each report to the Office of Health Systems Management is referred to the Deputy Attorney General for Medicaid Fraud Control for possible criminal investigation and to the Local District Attorney if a prior request for such information has been made by the District Attorney. Thirteen (13) such referral arrangements are currently honored. (August 1994)
- Each report is investigated on-site by Office of Health Systems Management Staff within 48 hours. A full investigation is conducted. This may include multiple visits to the residential health care facility, interviews of all involved, and a review of pertinent facility and patient records.
- The investigation results are compiled by the Office of Health Systems Management's Area Offices and forwarded to the Commissioner of Health's Designee for review.

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- The Commissioner of Health's Designee renders a findings that either sustains the allegation of abuse or finds the allegation unsustained. If the allegation is unsustained, all records related to the report are expunged in accordance with the statute and the accused, the facility administrator and all officials previously contacted are notified of the determination. If an allegation is sustained, the accused is notified by certified mail that he/she may request a fair hearing and that as a result of the sustained finding he/she may be liable for a fine of up to \$2,000. The administrator of the facility is also notified of the sustained finding.
- The request for a fair hearing must be made in writing within 30 days of receipt of the finding of the Commissioner of Health's Designee. All fair hearings are scheduled and conducted by the Department of Health's Division of Legal Affairs. The purpose of the hearing is to determine whether the record of the report of the written determination of the sustained finding should be amended or expunged on the grounds that the record is inaccurate or the determination is not supported by the evidence. The burden of proof in such a hearing is on the Office of Health Systems Management. The hearing will determine whether or not the sustained finding will be upheld, and if so, whether or not a fine is to be assessed. In the case of a licensed person, a referral will be made to the appropriate licensing board, and in the case of a certified nurse aide, a referral would be made to the RHC Nurse Aide Registry.
- 10NYCRR 415.26j requires RHCs to establish and implement policies and procedures for the receipt, review and investigation of allegations of misappropriation of resident property by individuals in the employ of and/or whose services are utilized by the facility. This is to be done regardless of the monetary value of the property.
- An investigation is required to be made no later than 48 hours after the receipt of the allegation. The facility must maintain a log regarding the receipt, review, investigation, and disposition of every allegation including the name of the complainant and resident, a description of the personal property involved, and the staff designated to conduct the review and investigation.
- Under the General Complaint program, the Department investigates complaints of inadequate response by RHCs to allegations of misappropriation of resident property. These complaints may be made to the Office of Health Systems Management Hotline as indicated above.

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- The RHCF is required to notify the resident and complainant in writing as to the findings upon disposition of the allegation and to notify the appropriate police agency when the results of the investigation indicate that there is reasonable cause to believe that a resident's personal property valued at more than two hundred fifty dollars has been misappropriated. The RHCF may elect to make such notification when the personal property is valued at less than that amount.
- The RHCF is required to monitor all such referrals at least quarterly and to notify the New York State Department of Health within 72 hours of receipt of notice that such referral resulted in the conviction of an individual who was involved in the misappropriation of resident property.
- Upon receipt of notice of a conviction involving misappropriation of resident property by a nurse aide, the Department provides the individual with an opportunity to dispute the allegations and conviction. Report is then made to the New York State Nurse Aide Registry.
- Upon receipt of notice of a conviction involving misappropriation of resident property involving a licensed professional, a referral is made to the appropriate licensing authority. The licensing authority takes appropriate action after satisfying the individual's due process rights.
- When a referral to the Registry is made of a sustained finding of physical abuse, mistreatment or neglect, or a conviction for misappropriation of resident property, the individual is given an opportunity to provide a brief statement, not exceeding 150 words, disputing the findings provided that this does not name any residents or the complainant.

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- Upon receipt of a written request, the New York State RHCF Nurse Aide Registry provides the following information:

Verification that an individual is a certified nurse aide,

The certification number,

The date of certification/recertification,

Copies of any final findings of resident abuse, mistreatment or neglect by a nurse aide and any statement from the nurse aide disputing the findings.

A report of a criminal conviction for resident abuse, mistreatment, neglect or misappropriation of resident property and the date of conviction.

This information is also available by telephone to RHCFs, nurse aide agencies/employment organizations, and nurse aide registries maintained by other states.

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